Vong Ban Hin v Laksamana Realty Sdn Bhd

HIGH COURT (MELAKA) — CIVIL APPEAL NO 12–26 OF 2002
LOW HOP BING J
19 OCTOBER 2004

Civil Procedure — Costs — Taxation — Review — Getting-up fee — Application to transfer of proceedings dismissed — Whether quantum allowed excessive — General principles applicable — Rules of the High Court 1980 O 59

Words and Phrases — 'as the circumstances require' — Effect of O 59 r 36(5) of the Rules of the High Court 1980

The respondent filed an action against the appellant in the Melaka sessions court and the appellant had applied to transfer the proceedings to the Melaka High Court. That application was dismissed with costs by the sessions court and subsequently the appellant's appeal was also dismissed with costs on the grounds, *inter alia*, that the learned Chief Judge vide a letter had already dismissed the appellant's application to transfer the proceedings. The respondent filed the bill of costs for taxation and the learned senior assistant registrar awarded the taxed costs of RM22,000 and RM500 for two items. The appellant applied for a review of the quantum for these two items and the learned deputy registrar affirmed the earlier decision. Dissatisfied, the appellant applied to judge in chambers for further review of the decision on the taxed costs.

The issue for determination was whether the registrar had correctly exercised his discretion in arriving at his decision on taxation or whether the registrar's decision on the taxation had been exercised on some wrong principle.

Held, allowing part of the application:

Principles (a) and (b) in para 1(2) Appendix 1 Part X of O 59 of the Rules of the High Court 1980 are significant in that the transfer of proceedings do not involve exceptional complexity, difficulty or novelty of issues. The item for getting up should be more realistic, in order to reflect the type of application, proceeding, matter, cause or process in an appeal relating to the transfer of proceedings. As such that the quantum of RM22,000 allowed by the registrar for getting up was obviously excessive (see paras 17 and 18).

[**Bahasa Malaysia summary**

Responden telah memfailkan satu tindakan terhadap perayu di mahkamah sesyen Melaka dan perayu telah memohon untuk pemindahan prosiding keMahkamah Tinggi Melaka. Permohonan tersebut telah ditolak dengan kos oleh mahkamah sesyen dan rayuan perayu juga turut ditolak atas alasan-

alasan, antara lain, bahawa Ketua Hakim Negara yang arif melalui surat telah pun menolak permohonan perayu untuk memindah prosiding. Responden memfailkan bil kos untuk taksiran dan penolong kanan pendaftar yang arif terdahulu telah mengawardkan kos yang ditetapkan sebanyak RM22,000 dan RM500 untuk dua butiran tersebut. Perayu memohon untuk mengkaji semula jumlah bagi kedua-dua butiran tersebut dan timbalan pendaftar yang arif mengesahkan keputusan yang terdahulu. Tidak puas hati, perayu telah memohon kepada hakim dalam kamar untuk pengkajian semula yang selanjutnya keputusan terhadap kos yang ditetapkan.

Isu untuk diputuskan adalah sama ada pendaftar telah melaksanakan budi bicaranya dengan betul dalam mencapai keputusannya terhadap taksiran kos atau sama ada keputusan pendaftar terhadap taksiran kos dilaksanakan menerusi prinsip yang salah.

Diputuskan, membenarkan sebahagian permohonan tersebut:

Prinsip-prinsip (a) dan (b) di para 1(2) Appendix 1 Bahagian X A 59 Kaedah-Kaedah Mahkamah Tinggi 1980 adalah penting di mana prosiding pemindahan satu tindakan tidak melibatkan isu-isu yang kompleks, susah dan novel. Butiran untuk penyediaan guaman hendaklah lebih realistik, yang akan menggambarkan jenis permohonan, prosiding, perkara, kausa atau proses di dalam rayuan yang melibatkan prosiding pemindahan. Maka, jumlah RM22,000 yang dibenarkan oleh pendaftar untuk penyediaan guaman adalah berlebihan (lihat perenggan 17 dan 18).]

Notes

For cases on taxation of costs, see 2 *Mallal's Digest* (4th Ed, 2001 Reissue), paras 1823–1878.

For cases on getting up fees, see 2 *Mallal's Digest* (4th Ed, 2001 Reissue) paras 1637–1650.

Cases referred to

Chan Kok Choon JP v MBf Finance Bhd [2001] 1 MLJ 5 (refd)

Chen Teti v Ornaresort Berhad, Melaka High Court Civil Suit No (2)22–64 of 2001 (refd)

Coon v Diamond Tread Co Ltd [1950] 2 All ER 385 (refd)

Diversey (Far East) Pte Ltd v Chat Chung Ching Chester & Ors (No 2) [1993] 1 SLR 542 (refd)

Gooi Hock Seng v Chuah Guat Khim, Pemegang harta pesaka bagi estet Chuah Teow Hock, simati [2003] 3 AMR 3683 (folld)

Hunt v RM Douglas (Roofing) Ltd [1988] 3 AER 823 (refd)

Jackson v Parker and Gurney Champion, English CA 5 November 1985 (refd)

JP Finance (M) Bhd v Tanswan Brothers Enterprise Sdn Bhd & Ors [1994] 1 MLJ 47 (refd)

Kerajaan Negeri Johor & Anor v Adong bin Kuwau & Ors [2002] 3 MLJ 705 (refd)
Liau Kim Lian v Bajuria [1971] 1 MLJ 276 (refd)
Lloyds Bank Plc v Ang Cheng Ho Quarry & Ors [1993] 1 MLJ 127 (refd)
MC Corbett v Ipoh Tin Dredging Ltd [1936] MLJ 278 (refd)
Southern Finance Co Bhd v Zamrud Properties Sdn Bhd (No 3) [1998] 7 MLJ 168 (refd)
Starlite Ceramic Industry Ltd v Hiap Huat Pottery [1973] 1 MLJ 146 (refd)
Thorne v Thorne [1979] 1 WLR 659 (refd)
United Malayan Banking Corp v Syarikat Perumahan Luas Sdn Bhd [1991] 3 MLJ 181 (refd)
Vong Ban Hin v Laksamana Realty Sdn Bhd Melaka High Court Civil Appeal No 12–64 of 2000 (refd)

Legislation referred to

Rules of the High Court 1980 O 59 r 36(1), (5), para 1(1), (2) Appendix 1 Part X Subordinate Courts Rules 1980 O 22 r 3

Appeal from: Summons No 52–250 of 1994, Sessions Court (Melaka)

Shaari Nor (Shaari Nor & Co) for the appellant.
J Amardas (KP Ng & Amardas) for the respondent.

Low Hop Bing J:

I REVIEW OF TAXATION OF COSTS

[1] Before me is encl (51) by way of summons-in-chambers under O 59 r36(1) of the Rules of the High Court 1980 filed by the appellant Vong Ban Hin ('Vong') for an order:

(1) to review the decision of the learned deputy registrar ('the registrar') who had on 19 January 2004 pursuant to encl (37) filed by Vong affirmed the order of the given on 19 February 2003 in respect of getting up in item No 15, in the sum of RM22,000, and item No 16 in relation to costs at the registrar's review, at RM500; and further costs of RM150 awarded to the respondent, Laksamana Realty Sdn Bhd ('Laksamana'); and

(2) that Laksamana do pay to Vong the costs of this summons-in-chambers and also costs for encl (37).

II FACTUAL BACKGROUND

[2] Vide encl (115) in the Melaka sessions court summons no 52–250 of 1994, Vong as the defendant had applied to the sessions court to transfer the proceedings to the Melaka High Court. On 11 June 2002, that application was heard and dismissed with costs by the sessions court. The subject matter concerns the land owned by Laksamana and Vong had disputed the title thereto. Being dissatisfied with that dismissal, Vong appealed to me as judge in chambers.

[3] That appeal was heard and dismissed with costs, by me on 16 July 2002, on the grounds, *inter alia*, that the learned Chief Judge's letter dated 5 April 2002 had already dismissed Vong's application to transfer the proceedings to the Melaka High Court and that the Melaka High Court and sessions court are bound by the learned Chief Judge's decision contained in the said letter.

[4] On 5 September 2002, Laksamana filed the bill of costs for taxation which was heard on 19 February 2003 by the then learned senior assistant registrar who awarded the aforesaid taxed costs of RM22,000 for item No 15 and RM500 for item 16.

[5] Vide encl (37), Vong applied for a review of the quantum for these two items which were affirmed upon further review by the registrar.

[6] Hence, this application for further review before me.

III SUBMISSIONS BY COUNSEL

[7] Mr Shaari Nor, learned counsel for Vong, submitted that the taxed costs of RM22,000 for item 15 and RM500 for item 16 were excessive, which should be reduced to RM1,500 and RM15 respectively, as the registrars have failed to consider the facts eg:

(1) the appeal arose from an interlocutory application before the sessions court, resembling an application for summary judgment with a fixed costs of RM350;

(2) of the nine authorities cited for Laksamana, only one authority was referred to in the High Court;

(3) the appeal was a refreshment of memory;

(4) there was no question of law involved; and

(5) the value of the subject matter ie land is irrelevant.

JP Finance (M) Bhd v Tanswan Brothers Enterprise Sdn Bhd & Ors [1994] 1 MLJ 47; *Chen Teti v Ornaresort Berhad*, Melaka High Court Civil Suit No(2)–22–64 of 2001; and *Vong Ban Hin v Laksamana Realty Sdn Bhd*, Melaka High Court Civil Appeal No 12–64 of 2000 were cited in support.

[8] For Laksamana, it was contended by Mr J Amardas that the costs which became the subject matter of the present review had been awarded after dismissing Vong's application for transfer of proceedings based on several grounds, for which preparations had been done.

IV PRINCIPLES GOVERNING REGISTRAR'S DISCRETION

[9] Having regard to the aforesaid submissions, it is pertinent to refer to para 1(1) Appendix 1 Part X of O 59 which expressly provides that the amount of costs in respect of getting up shall (subject to any order of the court fixing

the costs to be allowed) be in the discretion of the registrar, within the limits of the sums so entered, if any.

[10] Under para 1(2) thereof, in exercising his discretion, the registrar shall have regard to all relevant circumstances, and in particular to:

(a) the complexity of the item or the cause or matter in which it arises and the difficulty or novelty of the questions involved;

(b) the skill, specialised knowledge and responsibility required of, and the time and labour expended by, the solicitor or counsel;

(c) the number and importance of the documents (however brief) prepared or perused;

(d) the place and circumstances in which the business involved is transacted;

(e) the importance of the cause or matter to the client;

(f) where money or property is involved, its amount or value;

(g) any other fees and allowances payable to the solicitor or counsel in respect of other items in the same cause or matter, but only where work done in relation to those items has reduced the work which would otherwise have been necessary in relation to the item in question.

[11] All the relevant circumstances must therefore be considered and such circumstances shall include but not limited to the aforesaid seven circumstances.

[12] The registrar has referred to a number of authorities which lay down principles of general application in relation to the taxation of bills of costs. While these principles provide useful guidelines in this area, it is essential for the registrar to have regard to the specific type of application, proceeding, matter, cause or process brought before the court, as has been alluded to by the Court of Appeal in *Chan Kok Choon JP v MBf Finance Bhd* [2001] 1 MLJ 5.

V REVIEW JUDGE'S FUNCTION

[13] Some established principles have been judicially expounded.

(1) Unless it can be demonstrated that the taxing registrar has exercised his discretion capriciously or has erred on a question of principle, eg he has gone on some wrong principle, or his decision on quantum is plainly wrong, or for some other reason similar to those which will induce an appellate court to interfere with the discretion of a judge of the first instance eg that matters that ought but was not taken into account, the court would have no jurisdiction to interfere (see *Coon v Diamond Tread Co Ltd* [1950] 2 All ER 385; *United Malayan Banking Corp v Syarikat Perumahan Luas Sdn Bhd* [1991] 3 MLJ 181 (HC) per Edgar Joseph Jr J (later FCJ);

Halsbury's Laws of England 4th Ed Vol 37 paras 757–850; per Chong Siew Fai J (later CJ (Sabah & Sarawak) in *Lloyds Bank Plc v Ang Cheng Ho Quarry & 3 Ors* [1993] 1 MLJ 127 (HC); *Chan Kok Choon JP v MBf Finance Bhd*, supra; *Starlite Ceramic Industry Ltd v Hiap Huat Pottery* [1973] 1 MLJ 146; ibid; *MC Corbett v Ipoh Tin Dredging Ltd* [1936] MLJ 278; ibid. (see also *Kerajaan Negeri Johor & Anor v Adong bin Kuwau & Ors* [2002] 3 MLJ 705 per Abdul Malek Ahmad FCJ and *Southern Finance Co Bhd v Zamrud Properties Sdn Bhd (No 3)* [1998] 7 MLJ 168).

(2) A taxation certificate can be set aside where the court thinks it right and proper in all the circumstances to do so: per Comyn J in *Thorne v Thorne* [1979] 1 WLR 659; per Balcombe J in *Jackson v Parker and Gurney Champion,* English CA 5 November 1985, unreported, followed by Chong Siew Fai J later CJ (Sabah & Sarawak) in *Lloyds Bank Plc*, supra.

(3) It is important to have regard to the specific type of application, proceeding, matter, cause or process brought before the court for hearing and determination which culminated in an order as to the costs under registrar's taxation and review, and the eventual review by the judge: *Chan Kok Choon* CA, supra.

(4) The phrase 'as the circumstances require' in O 59 r 36(5) confers on the judge a discretion which is to be judicially exercised.

(5) The hearing before the judge is not a rehearing but is a review: *Diversey (Far East) Pte Ltd v Chat Chung Ching Chester & Ors (No 2)* [1993] 1 SLR 542; per Abdul Malek Ahmad FCJ (now PCA) in *Gooi Hock Seng v Chuah Guat Khim, Pemegang harta pesaka bagi estet Chuah Teow Hock, simati* [2003] 3 AMR 3683, at p 3691.

[14] I shall now consider and determine whether the registrar has correctly exercised his discretion after a consideration of all the circumstances or whether the registrar's decision on the taxation has been exercised on some wrong principle or the quantum allowed by the registrar was obviously wrong in the sense of occasioning an error of principle or other material error or has exercised his discretion capriciously.

[15] The item in the bill of costs for taxation was item 15 which is item 26 in Part IV of Appendix 1 to O 59 of the Rules of the High Court 1980, which reads:

> 26 Instructions for trial or hearing of any cause or matter, whatever the mode of trial or hearing
>
> Discretionary

[16] In this regard, I am unable to uphold the contention for Vong that the getting up awarded in respect of applications for summary judgment under O 14 as in *JP Finance*, supra, or under O 81 as in *Chen Teti*, supra, or on an issue

relating to an admission under O 22 r 3 of the Subordinate Courts Rules 1980, as in *Vong Ban Hin*, unreported, supra, all of which were cited for Vong herein, should apply to the instant application for transfer of proceedings from the sessions court to the High Court, as alluded to above.

[17] However, principles (a) and (b) in para 1(2) Appendix 1 Part X of O 59 are significant in that the transfer of proceedings do not involve exceptional complexity, difficulty or novelty of issues and so I am of the view that the quantum of RM22,000 allowed by the registrar is obviously excessive, having regard to the authoritative judgment of Abdul Malek FCJ (now PCA) in *Gooi Hock Seng*, supra.

[18] In the circumstances, the quantum of RM22,000 awarded for the item of getting up should be scaled down to a more realistic level, which I hereby review to RM10,000 in order to reflect the type of application, proceeding, matter, cause or process in an appeal relating to the transfer of proceedings.

[19] As for item 16, the sum of RM500 awarded as the costs in the registrar's review, I am unable to find anything objectionable or erroneous and is hereby upheld.

[20] In respect of the costs of the instant review, the proper order is that the parties do bear their own costs.

VI INTEREST

[21] Interest is payable where an order directs payment of the costs to be taxed and that the interest is to run from the date of entry of judgment: *Hunt v RM Douglas (Roofing) Ltd* [1988] 3 AER 823 and *Liau Kim Lian v Bajuria* [1971] 1 MLJ 276.

[22] I therefore award interest on all the costs reviewed herein at 8% pa from the date of my judgment given on 16 July 2002 to the date of realization.

Order accordingly

Reported by Sugandra Rao